

Executive Officer's Summary Report
9:00 a.m., April 23, 2009
Fortuna River Lodge Conference Center
Chinook Room
1800 Riverwalk Drive
Fortuna, CA

Item: 5

Subject: Public Hearing on Order No. R1-2009-0006 to consider termination of Waste Discharge Requirements and National Pollutant Discharge Elimination System (NPDES) Permit for **Evergreen Pulp, Inc., Samoa Pulp Mill** NPDES No. CA0005894, WDID No. 1B77005OHUM

Background

Waste Discharge Requirements (WDR) Order No. R1-2004-0047 was issued to Stockton Pacific Enterprises, Inc. for the Samoa Pulp Mill (also referred to as the "Facility") on June 22, 2004, prescribing requirements for the discharge of waste from the operation of the Samoa Pulp Mill to the Pacific Ocean. WDR Order R1-2004-0047 reissued Order No. R1-2001-0063 under the new owner's name, and did not otherwise change the discharge prohibitions, effluent limitations, or receiving water limitations. On March 18, 2005, WDR Order No. R1-2004-0047 was administratively transferred to Evergreen Pulp, Inc., a subsidiary of Lee & Man Paper Manufacturing Limited. Under the terms of the Clean Water Act and the National Pollutant Discharge Elimination System (NPDES) the permit for Evergreen Pulp, Inc., expired on June 28, 2006.

Evergreen Pulp, Inc. (Discharger) was the owner of record and operated the Facility from January 21, 2005 to February 5, 2009. Over this period, the discharge of waste from the Facility by the Discharger was governed by WDR Order No. R1-2004-0047, which also serves as an NPDES Permit (Permit No. CA0005894) under the Clean Water Act. Evergreen Pulp, Inc. submitted a Report of Waste Discharge, dated April 28, 2005, and applied for an NPDES permit renewal to continue the discharge of approximately 13.6 millions gallons per day, on average, of untreated wastewater from the Facility. The application was deemed complete on November 5, 2007. A tentative Order was developed and made available for public comment on September 19, 2008. The tentative Order contained effluent limitations and requirements that were much more stringent than the expired permit. Based on the compliance history of the facility, it is unclear whether or how the Facility, as it is currently designed and operated, would be able to meet the proposed effluent limitations.

On October 17, 2008, Evergreen Pulp, Inc. ceased operation of the Facility, stating that the shutdown was in response to unfavorable conditions in the pulp and paper market.

In a letter dated October 21, 2008, Evergreen Pulp, Inc. indicated that it intended to resume production in three to six months depending on market conditions.

On November 24, 2008, the Regional Water Board was made aware through the Office of Chief Counsel that Evergreen Pulp, Inc. was in the process of selling the Facility. On December 18, 2008, Regional Water Board legal counsel contacted legal counsel for ACE Mill, Inc. (a prospective buyer at the time) and explained that any new operator of the Facility would not be authorized to discharge under the existing NPDES permit and indicated the Regional Water Board's intent to reissue the permit with more stringent requirements than the existing permit. Legal counsel also requested that ACE Mill, Inc. submit a report of waste discharge within 30 days so that Regional Water Board staff could begin drafting a new permit for the mill, and stated that if the Regional Water Board did not receive a report of waste discharge, staff would likely recommend that the Regional Water Board rescind the current permit.

On January 7, 2009, the Regional Water Board issued a Notice of Intent to terminate Waste Discharge Requirements Order No. R1-2004-0047 in accordance with 40 CFR § 122.61(b) to prevent the automatic transfer of the existing NPDES permit from the Discharger to the new owner of the Facility.

On February 23, 2009, the Regional Water Board received written notice that the Samoa Acquisition Corporation had acquired the assets of the Samoa Pulp Mill from the Discharger on February 6, 2009. In the notice, Robert Simpson, on behalf of the Samoa Acquisition Corporation, requested that the Regional Water Board not terminate the existing NPDES permit for the Facility and instead transfer the current WDRs Order R1-2004-0047 to the Samoa Acquisition Corporation. The Samoa Acquisition Corporation has since been renamed Freshwater Pulp, Inc.

Compliance Summary

From March 2005 until the Facility ceased operation in October 2008, the Facility produced an average of 615 air-dried tons (ADT) per day of processed pulp. This production rate was less than the anticipated production rate of 700 ADT/day. Even operating below the anticipated production rate, the discharge from the Facility exceeded the effluent limitation for daily maximum biochemical oxygen demand (BOD) on 147 days; that is, 10% of time over the 3 ½ year period. In 2008, the discharge was out of compliance with the daily maximum BOD limitation on 49% of the operating days. Over the same 3 ½ year period, the discharge exceeded the monthly average BOD effluent limitation in 18 out of 44 months. In 2008 alone, the monthly average BOD effluent limitation was exceeded in 9 of 10 months.

For permit violations for the period from March 1, 2005 to December 31, 2007, Administrative Civil Liability Complaint No. R1-2008-0097 was issued by the Regional Water Board Assistant Executive Officer on August 1, 2008. The Complaint proposed the assessment of both discretionary and mandatory minimum penalties for the violations in the amount of \$463,000. Representatives of Evergreen and the Regional Water Board Prosecution Staff entered into a settlement as memorialized in the

Complaint, Waiver of Right to a Public Hearing, and the September 9, 2008 letter from Regional Water Board Assistant Executive Officer Luis Rivera, entitled "Finalization of Settlement of Administrative Civil Liability Complaint No. R1-2008-0097." Under terms of the settlement and Administrative Civil Liability Order No. R1-2009-0009, adopted by the Regional Water Board on January 29, 2009, the Discharger agreed to remit, within 30 days of the date of the order, payment of the full penalty of \$463,000 to the State Water Pollution Cleanup and Abatement Account.

On January 27, 2009, the Assistant Executive Officer issued Administrative Civil Liability Complaint No. R1-2009-0012 for violations of effluent limitations that occurred from January 1, 2008, through December 31, 2008, pursuant to the mandatory minimum penalties and civil liability provisions contained in California Water Code section 13385, subsections (h) and (i). The Complaint proposed the assessment of both discretionary and mandatory minimum penalties for the violations in the amount of \$453,000. The Complaint demonstrates a significant increase in MMP violations compared to the 2008 Complaint, which appears to be due to Evergreen's decision to change from the production of brownstock (non-bleached) pulp to Totally Chlorine Free (bleached) pulp production, which occurred, according to self-monitoring reports, on January 15, 2008.

Conclusion

Staff have concluded that it is appropriate to terminate WDR Order R1-2004-0047 because, prior to the Discharger voluntarily ceasing operation of the Facility, the discharge was in significant noncompliance with effluent limitations and the new owner of the Facility has not demonstrated how the Facility will operate in compliance with the previous permit or the effluent limitations and requirements in the tentative Order, which are more stringent than these in the previous permit.

Public Involvement

Regional Water Board staff received comment letters regarding the proposed termination from Northern California River Watch, Forest Unlimited, Coast Action Group, Friends of the Garcia River and other members of the public. Copies of the letters are included in the agenda package.

PRELIMINARY STAFF
RECOMMENDATION:

Adopt the Order as proposed.